

AMENDED IN ASSEMBLY APRIL 14, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1260

Introduced by Assembly Member Davis

February 28, 1997

An act to amend ~~Sections 432.7, 432.8, and 1057 of the Labor~~
Section 11105.3 of the Penal Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 1260, as amended, Davis. Employment: arrest record: conviction.

Existing law *generally* prohibits an employer, whether public or private, individual or corporate, from asking an applicant for employment to disclose, or utilizing as a factor in determining any condition of employment, information concerning an arrest or detention that did not result in a conviction, except as specified, or to disclose a conviction for specified provisions related to controlled substances. *Existing law provides, however, that a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving specified offenses of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care.*

This bill would provide, in addition, that a county or its delegated agency may request from the Department of Justice, and may utilize only for licensing or certification

purposes, records of all convictions or arrests involving specified offenses of a person who applies for a license, employment, or volunteer position with a county agency that provides services to minors under the authority of a county probation, welfare, health, or mental health department.

~~Existing law generally prohibits an employer who requires an employee or applicant for employment to be photographed or fingerprinted from using the photograph or fingerprint to the detriment of the employee or applicant.~~

~~This bill would provide that these prohibitions do not apply to a public or private agency that provides services to minors under the authority of a county probation, welfare, health, or mental health department when requesting this information from a person applying for employment that will involve custody, care, or supervision of a minor, or from an employee of one of these entities who provides custody, care, or supervision of a minor.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 432.7 of the Labor Code is~~

2 *SECTION 1. Section 11105.3 of the Penal Code is*
3 *amended to read:*

4 11105.3. (a) (1) Notwithstanding any other law, a
5 human resource agency or an employer may request
6 from the Department of Justice records of all convictions
7 or any arrest pending adjudication involving the offenses
8 specified in subdivision (g) of a person who applies for a
9 license, employment, or volunteer position, in which he
10 or she would have supervisory or disciplinary power over
11 a minor or any person under his or her care. ~~The~~

12 (2) *Notwithstanding any other law, a county or its*
13 *delegated agency may request from the Department of*
14 *Justice, and may utilize only for licensing or certification*
15 *purposes, records of all convictions or arrests involving*
16 *the offenses specified in subdivision (g) of a person who*
17 *applies for a license, employment, or volunteer position*
18 *with a county agency that provides services to minors*

1 *under the authority of a county probation, welfare,*
2 *health, or mental health department.*

3 (3) The department shall furnish the information to
4 the requesting employer, *county, or delegated agency*
5 and shall also send a copy of the information to the
6 applicant.

7 (b) ~~Any~~ *Notwithstanding any other law, any request*
8 *for records under subdivision (a) shall include the*
9 *applicant's fingerprints, which may be taken by the*
10 *requester, and any other data specified by the*
11 *department. The request shall be on a form approved by*
12 *the department, and the department may charge a fee to*
13 *be paid by the employer, human resource agency, or*
14 *applicant for the actual cost of processing the request.*
15 *However, no fee shall be charged a nonprofit*
16 *organization. The department shall destroy an*
17 *application within six months after the requested*
18 *information is sent to the ~~employer~~ requester and*
19 *applicant.*

20 (c) Nothing in this section supersedes any law
21 requiring criminal record access or dissemination of
22 criminal history information. In any conflict with another
23 statute, dissemination of criminal history information
24 shall be pursuant to the mandatory statute. This
25 subdivision applies to, but is not limited to, requirements
26 pursuant to Article 1 (commencing with Section 1500) of
27 Chapter 3 of, and Chapter 3.2 (commencing with Section
28 1569) and Chapter 3.4 (commencing with Section
29 1596.70) of, Division 2 of, and Section 1522 of, the Health
30 and Safety Code, and Sections 8712, 8811, and 8908 of the
31 Family Code.

32 (d) The department may adopt regulations to
33 implement the provisions of this section as necessary.

34 (e) As used in this section, "employer" means any
35 nonprofit corporation or other organizations specified by
36 the Attorney General which employs or uses the services
37 of volunteers in positions in which the volunteer or
38 employee has supervisory or disciplinary power over a
39 child or children.

1 (f) As used in this section, “human resource agency”
2 means a public or private entity, excluding any agency
3 responsible for licensing of facilities pursuant to the
4 California Community Care Facilities Act (Chapter 3
5 (commencing with Section 1500)), the California
6 Residential Care Facilities for the Elderly Act (Chapter
7 3.2 (commencing with Section 1569)), Chapter 3.01
8 (commencing with Section 1568.01), and the California
9 Child Day Care Facilities Act (Chapter 3.4 (commencing
10 with Section 1596.70)) of Division 2 of the Health and
11 Safety Code, responsible for determining the character
12 and fitness of a person who is (1) applying for a license,
13 employment, or as a volunteer within the human services
14 field that involves the care and security of children, the
15 elderly, the handicapped, or the mentally impaired, or
16 (2) applying to adopt a child or to be a foster parent.

17 (g) Records of the following offenses shall be furnished
18 as provided in subdivision (a):

19 (1) Violations or attempted violations of Section 220,
20 261, 261.5, 262, 266, 266j, 267, 272, 273a, 273d, 273.5,
21 Sections 285 to 289, inclusive, Section 311.2, 311.3, 311.4,
22 311.10, 311.11, 314, 647.6, former Section 647a, or
23 subdivision (a) or (d) of Section 647, or commitment as
24 a mentally disordered sex offender under former Article
25 1 (commencing with Section 6300) of Chapter 2 of Part
26 2 of Division 6 of the Welfare and Institutions Code.

27 (2) Any crime described in the California Uniform
28 Controlled Substances Act (Division 10 (commencing
29 with Section 11000) of the Health and Safety Code),
30 provided that, except as otherwise provided in
31 subdivision (c), no record of a misdemeanor conviction
32 shall be transmitted to the requester unless the subject of
33 the request has a total of three or more misdemeanor or
34 felony convictions defined in this section within the
35 immediately preceding 10-year period.

36 (3) Any felony or misdemeanor conviction within 10
37 years of the date of the employer’s request under
38 subdivision (a), for a violation or attempted violation of
39 Chapter 3 (commencing with Section 207), Section 211 or
40 215, wherein it is charged and proved that the defendant

1 personally used a deadly or dangerous weapon, as
2 provided in subdivision (b) of Section 12022, in the
3 commission of that offense, Section 217.1, Chapter 8
4 (commencing with Section 236), Chapter 9
5 (commencing with Section 240), and for a violation of any
6 of the offenses specified in subdivision (c) of Section
7 667.5, provided that no record of a misdemeanor
8 conviction shall be transmitted to the requester unless
9 the subject of the request has a total of three or more
10 misdemeanor or felony convictions defined in this section
11 within the immediately preceding 10-year period.

12 (4) A conviction for a violation or attempted violation
13 of an offense committed outside the State of California
14 shall be furnished if the offense would have been a crime
15 as defined in this section if committed in California.

16 (h) Any criminal history information obtained
17 pursuant to this section is confidential and no recipient
18 shall disclose its contents other than for the purpose for
19 which it was acquired.

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22 **All matter omitted in this version of the**
23 **bill appears in the bill as introduced in the**
24 **Assembly, February 28, 1997 (JR 11)**
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